vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3956 OF 1998

Lahoo Pandurang Sutar
residing at Alandi Road
Shastri Chowk, Bhoisari, Pune ... Petitioner

V/s.

M/s.Tata Engineering and
Locomotive Company Ltd.,
Pimpri, Pune - 18 ... Respondent

Mr.R.G. Ketkar for Petitioner
Mr.C.U. Singh with Mr.K.S. Bapat for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGEMENT RESERVED ON: DECEMBER 5, 2005
JUDGEMENT PRONOUNCED ON: **DECEMBER 23, 2005**

JUDGMENT:

. By this Petition, the award part I and II passed by the learned Counsel in Reference (IDA) No.290 of 1991 have been challenged. The Petitioner contends that he was a member of the TELCO Kamgar Sangathana (for short, 'TKS'), one of the trade unions functioning in the company. It appears that the TKS raised a demand for payment of bonus in the year 1985-86 which was referred for adjudication. General demands were also submitted by TKS in 1988. A new union known as the TELCO Employees Union (for short, 'TEU') was formed in February 1989. The Respondent-company entered into an agreement with the TEU settling certain demands which

were pending. According to the Petitioner, the presence of two unions in the company led to an unhealthy atmosphere in the company as a result of which two workmen belonging to the rival unions were suspended pending an enquiry. On 25.3.1989, a chargesheet was issued to the Petitioner alleging that he had committed acts of indiscipline and he was therefore, charged for having committed misconduct under section 24(a), (b) and (i) of the Model Standing orders. It was alleged that he alongwith other workers had assaulted employees who wanted to report for duty on 15.3.1989. The petitioner assaulted one of the workers, Nevale, at 6.15 am near the ERC gate of the Pimpri works of the Respondent company. Nevale had suffered several injuries. The annexure also named one Prakash Mahadeo Warade, another workman who had been allegedly assaulted by the Petitioner at 6.25 am near the ERC gate. He had also suffered several injuries. A corrigendum was issued to this chargesheet on 19.7.1989 correcting the typographical error in the time disclosed in the chargesheet. The time of assault was corrected to 8.15am and 8.25 am on Nevale and Warade respectively. An enquiry was instituted against the Petitioner where eight witnesses were examined including Nevale and Warade. The Enquiry Officer found the Petitioner guilty of the misconduct alleged against him. On being

furnished the report of the Enquiry Officer, the disciplinary authority dismissed the Petitioner from service on 31.12.1990.

2. The Petitioner raised an industrial dispute which was referred for adjudication and marked as Reference (IDA) no.290 of 1991. After the pleadings were complete, the Labour Court by award part I held that the enquiry conducted against the Petitioner was in consonance with the principles of natural justice and fairplay. The evidence of the workman was recorded on two issues, namely, the punishment which should be imposed on him and the quantum of backwages payable. He was cross-examined extensively by the respondent-company. By award Part II, the Labour Court held that the misconduct had been proved against the Petitioner and the punishment of dismissal was justified. The Labour Court rejected the Reference. It is these awards which are being challenged in the present petition.

3. Mr.Ketkar, appearing for the Petitioner, contends that there is no material on record to arrive at the conclusion that the Petitioner had committed the alleged misconduct. According to the learned Advocate, the evidence on record did not establish the

petitioner's guilt and the preponderance of probabilities did not point to the petitioner having committed any misconduct. He submits that the enquiry officer's report is perverse and not based on the material on record. He submits that the probability of the Petitioner not being involved in the incident of assault cannot be ruled out as the complaint lodged by the assaulted workmen Nevale and Warade did not mention the petitioner's name. The Petitioner was implicated in the assault only after 10 days when the chargesheet was issued to him. Therefore, he submits that the Petitioner was not guilty of misconduct and the Labour Court is in error in dismissing the Reference.

4. Mr.Singh, appearing on behalf of the Respondent-Company, submits that the injury certificate issued to Nevale and Warade had corroborated each other's evidence and had specifically named the Petitioner before the Enquiry Officer. He urges that the Enquiry Officer has concluded that the misconduct was proved. The Labour Court has not held that the findings of the Enquiry Officer were perverse. He therefore, submits that there is no need to interfere with t;he award and under Article 226 of the Constitution of India. Furthermore, he adds that the past service record of the Petitioner shows that he was

suspended on an earlier occasion for riotous and disorderly behaviour.

6. The Award part 1 indicates that the workman, the petitioner herein, had been given an opportunity to defend himself before the Enquiry Officer. The Labour Court in my opinion, has rightly held that the enquiry conducted against the Petitioner was in consonance with the rules of natural justice. In fact, Mr.Ketkar for the Petitioner rightly did not contest these findings of the Labour Court. Therefore, the award part I is confirmed.

7. The Labour Court has on the basis of the material on record concluded that the misconduct alleged against the Petitioner was proved before the Enquiry Officer and that the punishment of dismissal was justified. There is no doubt that the Petitioner had been named by both the assaulted workmen in their complaints to the respondent-company. These complaints were lodged soon after the incident. The evidence of the assaulted workmen recorded before the Enquiry Officer also shows that they have identified the Petitioner for having assaulted them and also for having instigated others to assault them. However, the security officers examined before the Enquiry Officer

that is, Chavan and Kane do not mention the name of the Petitioner. Both the assaulted workmen were categoric in their evidence which was recorded, appointing to the Petitioner's involvement in the assault. The respondent's company examined the time-keeper who deposed that the Petitioner was not paid wages for 15.3.1989 since he was not present on work in the first shift from 6.30 am to 3 pm. The other witnesses examined by the management before the Enquiry Officer included the Doctor who had examined the two assaulted workmen. The photographer who had photographed the assaulted workmen and the Human Resources Officer of the Respondent-company were also examined. All these witnesses were cross-examined by the respondent-workman. None of them have shown any contradictions in the cross-examination and have in fact corroborated the statements made by the assaulted workmen. Nevale had deposed that he was pulled off the motor cycle on which he was proceeding to work by the petitioner and other workmen who he has named. Warade who was a few feet behind Nevale saw the Petitioner and other workmen beating Nevale and escaped from the situation by hiding in a toilet nearby on the company's premises. According to Warade, the mob chased him and broke down the door of the toilet, pulled him out and beat him mercilessly. Both these workmen have mentioned the name of the

Petitioner. There is no doubt that the Petitioner was expected to be on duty in the first shift from 6.30 am. Both the security officers have stated that the assault had taken place at around 8.15 am but they unable to identify each of the workman who was assaulting Nevale and Warade. The Labour Court has rightly considered the evidence on record and held that the preponderance of probabilities establish that the Petitioner was involved with the assault on Nevale and Warade. The presence of the Petitioner at the time of the incident had been established and, therefore, the Labour Court accepted the case of the Respondent-company.

8. In my view, the Labour Court has committed no error in holding that the Petitioner had committed the misconduct of assault and riotous and disorderly behaviour. The Labour Court has also rightly held that the misconduct of commission of going on an illegal strike has not been established since there was no declaration from any competent authority about there being a strike or its illegality. In my view, there is no need to interfere with the view taken by the Labour Court.

9. The judgment cited by Mr.Ketkar in the cases of *Yoginath D. Bagde v/s. State of Maharashtra*, **(1999) 7**

SCC 739 and *Lalit Popli v/s. Canara Bank,* **(2003) 3 SCC 583** are not very helpful to the Petitioner. There is no doubt that a Court exercising its powers under Article 226 can judicially review whether the enquiry held against a delinquent workmen has been held in consonance with the rules of natural justice. However, when the Labour Court has taken a possible view, which by no stretch of imagination can be called perverse, there is no need to interfere wit the awards.

10. Petition rejected. No order as to costs.